

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

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ORDER

**Shitla Devi
vs
State of Rajasthan & Ors.**

**S.B. CIVIL WRIT PETITION
NO.5342/2003 UNDER ARTICLE
226 OF THE CONSTITUTION OF
INDIA.**

DATE OF ORDER : 18th Sept, 2006

**PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.**

Mr.Harish Purohit, Advocate, for the petitioner.
Mr.Rameshwar Dave, Dy. Government Advocate for the
respondent-State.

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BY THE COURT: -

This writ petition was filed by the petitioner Shitla Devi Tiwari with the prayer that respondents be directed to allow the petitioner to appear in interview and get her testimonials verified and thereafter prepare fresh merit list and appoint her on the post of Physical Education Instructor Grade-III in District Bhilwara.

Factual matrix of the case are that the petitioner being a

widow candidate having B.A. and B.P.Ed degrees applied for appointment on the post of Physical Education Instructor Grade-III in pursuance of advertisement notice dated 28.7.2003 published in 'Rajasthan Patrika', Bhilwara Edition. The petitioner submitted her application to be considered for appointment in District Bhilwara wherein out of total 95 vacancies only 48 were available for general category candidates. The petitioner was covered under the category of widow as notified in para no.7 of the advertisement. The petitioner went to the office of the respondent no.3 on 20.8.2003 to find out her position in the merit list but to the surprise of the petitioner, the list was not affixed there. It was informed to the petitioner that the list has been torn by some candidates, therefore, the petitioner met respondent no.3 to inquire about her position in the merit list. She was informed that the eligible candidates whose names have appeared in the merit list shall be called for interview through call letters wherein their original testimonials would be verified. The petitioner received the call letter on 4.9.2004 requiring her to appear for interview on 3.9.2003. This letter was sent to the petitioner by speed post. The petitioner has placed on record the original postal envelop. According to the petitioner when letter was received on 4.9.2003, it was not possible for her to appear in interview on 3.9.2003. She immediately contacted the District Education Officer on 5.9.2003. But he informed her that

now interviews have been concluded on 3.9.2003, nothing can be done at this stage. She pleaded that although the interview was held on 3.9.2003, but no final selection has been made for the posts till today, therefore her documents could be verified even now.

The writ petition has been contested by the respondents, who in their reply have asserted that the last date for submission of the application forms was 13.8.2003 as per the advertisement. Provisional merit list of eligible candidates would then be notified on 18.8.2003. Whoever had any objection, they could submit their objection by 23.8.2003 and, thereafter, final merit list would be published on 27.8.2003 and candidates would have to appear for interview on 3.9.2003. It has also been submitted that the provisional list was duly affixed on notice board on 18.8.2003. According to the respondents, apart from the intimation sent to the candidates, the information with regard to date of interview was duly published in the newspapers and it was not changed. Even if the petitioner did not receive the call letter, she was required to appear for interview on 3.9.2003. The petitioner cannot blame the respondents for her own fault. It has been contended that since all appointments have been made and selected candidates have joined the duties. If the petitioner has not impleaded them as party-respondent, the writ

petition is liable to be dismissed on this count alone and as also on merits.

Learned counsel for the petitioner in addition to the aforesaid arguments, relied upon a judgment of this Court in Surendra Kumar Vs. State of Rajasthan & Ors reported in WLC 2006(1) 525. This court in somewhat similar facts obtaining in that case observed as under: -

"It is admitted position that the petitioner was eligible candidate and in view of eligibility, his candidature was required to be considered in the interview held on 29.3.2004. It is evident from Annexure 2 that the call letter was received by the Chanana post office 29.3.2003 at 2.30 p.m., which was delivered at the postal address of the petitioner, on the same day, at 4.00 p.m. Thus, it is amply clear that the petitioner received the delayed call letter on account of no fault on his part, but delay as well as fault was on the part of the respondents. It is also evident from Annexure 3 – the telegram, sent by the District Education Officer, Secondary -1, Alwar, whereby the petitioner was required to appear for interview on 29.3.2004, that it was delivered to the petitioner on 30.3.2004, at 3.40 p.m., on account of delay and fault on the part of the respondents, whereas the interview had taken place on 29.3.2004. So far as the publication of the date of interview in the newspaper 'Dainik Bhaskar' is concerned, no date has been given by the respondents as to on which date, the information with regard to the date of interview, was published in the newspaper. The petitioner immediately submitted representations (Annexure 4 and 5 respectively), ventilating his grievances that on

account of the fault on the part of the respondents, call letter was communicated to him after completion of the interview, but his representations were not considered by the respondents. Thus, in this view of the matter, the respondents have denied the legitimate claim of the petitioner and violated the principles of natural justice."

This Court in the aforesaid case, directed that taking an overall view of the matter and keeping in view the peculiar facts and circumstance of the instant case, the respondents should call the petitioner for interview and if he stands in merit, then his candidature be considered for appointment on the post of Physical Education Teacher Grade-III.

It appears that in the present case, this Court vide order dated 16.9.2003 while issuing notices to the respondents to show cause as to why the writ petition be not disposed of at admission stage, directed that one post of Physical Training Instructor Grade. III shall be kept vacant.

I have considered the arguments advanced by learned counsel for the parties and perused the record.

Call letter to the petitioner was sent by the postal envelop enclosed with the writ petition as Annex.6. A visual examination

of this postal envelop would show that the call letter Annex.5 dated 28.8.2003 was dispatched by speed post on 30.8.2003 at 20.20 hours (8.20 PM) and the same was received by the petitioner on 4.9.2003. In exactly similar circumstances, this Court in the case of Surendra Kumar (supra) has already taken a view that failure of respondents to timely intimate the candidate about the date of interview amounted to denying him his legitimate claim and violated the principles of natural justice. This Court taking an all over view of the matter, directed the respondents to call the petitioner for interview and consider his candidature as per his merit for appointment. The dispatch of letter having been made at 8.20 PM on 30.8.2003, it would have been hardly served upon the petitioner at least at a day before the date of interview. According to the scheme of the Rules, the interview was limited to only verify the original documents submitted by the incumbents. If the petitioner would have come to know about the date of interview, there was no reason for her not to appear in the interview having applied for appointment.

In the facts of the present case, I do not find any reason to depart from the view earlier taken by this Court in Surendra Kumar's case (supra) wherein also the date of interview was fixed on 29.3.2004 and the call letter to the petitioner was delivered by 30.3.2004.

In view of the above, the writ petition is allowed and the respondents are directed to now call the petitioner for interview on any date that may be intimated to her at least a week in advance and consider her case and if found to stand in merit, consider her case for appointment on the post of Physical Education Instructor Grade-III and if found suitable for appointment, the appointment of the petitioner shall be deemed to have been made from the date when the candidate immediately below her in merit was given such appointment in the category to which she belonged. She would however be entitled to only notional benefits for the intervening period, although benefits of seniority and increments etc shall be granted to her. Compliance of this order be made within a period of three months from the date of service a copy of this order.

There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-